

ARTHUR W. SCHMIDT

IBLA 80-233

Decided May 6, 1980

Appeal from a decision of the Montana State Office, Bureau of Land Management, refusing for recordation notices of location for two lode mining claims. 3833 (952) MCA-MT-05.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

APPEARANCES: Lawrence G. Stimatz, Esq., Butte, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Arthur W. Schmidt appeals from the decision of the Montana State Office, bureau of Land Management (BLM), dated December 6, 1979, returning his mining claim location notices for the Katie and Utah lode mining claims because he had not filed the notices with BLM within 90 days after the date of location as required by section 314

of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the pertinent regulations, 43 CFR 3833.1-2(b). The notices indicate that appellant located each claim on June 11, 1979. BLM received copies of the notices on October 23, 1979.

Section 314 of FLPMA requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner, and renders the claim void.

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location * * *.

In his statement of reasons, appellant asserts that the date of June 11, 1979, shown on each notice as the date of location, was a mistake as the actual and correct date of location of each mining claim, Katie and Utah, was October 8, 1979.

Examination of the copies of the location notices clearly shows that each notice unequivocally states the date of location as June 11, 1979, and the transmittal letter to BLM requesting recordation of the Katie and Utah lode mining claims also states that each claim had been located on June 11, 1979.

[1] Under FLPMA and the regulations, the requirements for filing are clear. This Board has repeatedly held that when a notice of a mining claim, located after October 21, 1976, is not filed with BLM within 90 days from the date of location, it has no force or effect and must be returned to the locator. William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978); M. J. Reeves, 41 IBLA 92 (1977). The claim must be deemed conclusively to have been abandoned under the terms of the statute, and it is rendered void. Phillip M. Gardiner, 41 IBLA 391 (1979).

The responsibility for complying with the recordation requirements rested with appellant. The information on the notice as to date of location is the sole source of information for BLM to determine

whether the recordation is timely under the requirements of FLPMA. In the circumstances of this case, it must be held that the action of BLM was proper.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joan B. Thompson
Administrative Judge

